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IN THE
COURT OF APPEALS OF INDIANA

WALSH & KELLY, INC.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 64A03-0712-CV-618
	)	
INTERNATIONAL CONTRACTORS, INC.,	)	
SIGNATURE PROPERTIES, INC., and	)	
NW INDIANA VISION HOMES,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Mary R. Harper, Judge
Cause No. 64D05-0603-PL-2820

July 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Plaintiff, Walsh & Kelly, Inc. (Subcontractor), appeals the trial court's grant of Partial Summary Judgment in favor of Appellee-Defendant[1] Signature Properties, Inc. (Developer).

We affirm.

ISSUE

Subcontractor raises two issues on appeal, one of which we find dispositive and restate as: Whether the trial court erred in granting Partial Summary Judgment to Developer, when Subcontractor has sought a mechanic's lien against Developer's property although Developer has already fully paid the general contractor for the work provided by Subcontractor.

FACTS AND PROCEDURAL HISTORY

Developer is a real estate developer who owns a residential subdivision known as Crisman Cove Subdivision (Subdivision) in the City of Portage, Indiana. The Subdivision consists of 36.76 acres divided into 89 lots. On September 8, 2003, the City of Portage approved the streets in the Subdivision for public use. After the recording of the Subdivision plat, Developer conveyed to Northwest Indiana Vision Homes (Vision Homes) a portion of the Subdivision lots. Developer then employed International Contractors, Inc. (Contractor) to perform excavation work, pave the roads, and install new curbs throughout the Subdivision. After Contractor performed the excavation work, Contractor hired

[1] Defendants International Contractors and Northwest Indiana Vision Homes are not parties to this appeal.

Subcontractor to install new curbs and pave the roads. On March 31, 2005, Subcontractor performed the requested work as agreed, performing no work on the actual Subdivision lots.

At the conclusion of the project, Developer paid Contractor the entire balance due for the excavation, curb installation, and road paving. On May 4, 2005, Subcontractor billed Contractor $97,588.50 for the road paving and curb installation. On May 23, 2005, Contractor paid $78,718.50, leaving a balance of $18,870. On August 15, 2005, Subcontractor billed Contractor an additional $41,239.50, but Contractor made no payments on the August invoice, leaving an outstanding balance of $60,109.50 owed to Subcontractor.

On October 21, 2005, Subcontractor filed a Sworn Statement of Intention to Hold a Lien (mechanic's lien) against 26 unsold Subdivision lots. On March 31, 2006, Subcontractor filed a Complaint to Foreclose Mechanic's Lien against Developer, Contractor, and Vision Homes. On January 24, 2007, Developer filed a Motion for Partial Summary Judgment, asserting that the mechanic's lien was neither valid nor enforceable. On February 22, 2007, Subcontractor filed a Cross-Motion for Partial Summary Judgment. On April 10, 2007, Subcontractor filed a Motion for Default Judgment against Contractor. On April 27, 2007, Default Judgment was entered against Contractor. On July 2, 2007, the trial court held a hearing on the Motions for Partial Summary Judgment. On September 14, 2007, the trial court entered an Order granting Developer's, but denying Subcontractor's, Motion for Partial Summary Judgment. On October 11, 2007, Subcontractor filed a Motion for Certification of Appeal of Interlocutory Order and for Stay of Proceedings Pending Appeal. On November 30, 2007, the trial court granted Subcontractor's motion. On February 15, 2008, we granted Subcontractor's petition to accept jurisdiction of their interlocutory appeal.

Subcontractor now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Subcontractor contends that the trial court erred in granting partial summary judgment to Developer. Summary judgment is appropriate only if the pleadings and evidence sanctioned by the trial court show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C); *see also Owens Corning Fiberglass Co. v. Cobb*, 754 N.E.2d 905, 909 (Ind. 2001). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. See T.R. 56(C); *see also Butler v. City of Peru*, 733 N.E.2d 912, 915 (Ind. 2000). Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving party. *Id*. If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. *Hall Bros. Const. Co. v. Mercantile Nat'l Bank of Indiana*, 642 N.E.2d 285, 289 (Ind. Ct. App. 1994) ("If a jury could come to different conclusions from the undisputed facts, then summary judgment is inappropriate."); *see also Bochnowski v. Peoples Fed. Sav. & Loan Ass'n*, 571 N.E.2d 282, 285 (Ind. 1991), *reh'g denied*; *Woodward Ins., v. White*, 437 N.E.2d 59, 62 (Ind. 1982) ("Summary judgment should not be granted if the facts give rise to conflicting inferences which would alter the outcome.").

Subcontractor argues that the trial court erred when it determined the mechanic's lien was invalid and unenforceable because Subcontractor had not performed services or labor on the 26 unimproved Subdivision lots. However, we find the fact that Developer, who owns

the 26 Subdivision lots, has fully paid Contractor for the work performed by Subcontractor, determinative of whether the mechanic's lien is valid in this instance.

Our mechanic's lien statute provides in pertinent part:

> (a)This section applies to a [subcontractor] employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.
>
> (b) …in order to acquire and hold a lien, a [subcontractor] must give to the property owner… written notice particularly setting forth the amount of the person's claim and services rendered for which:
>
> (1) the person's employer or lessee is indebted to the person; and
>
> (2) the person holds the property owner responsible.
>
> (c) Subject to subsections (d) and (e), the property owner is liable for the person's claim.
>
> (d) The property owner is liable to a [subcontractor] for not more than the amount that is due and may later become due from the owner to the employer or lessee.
>
> (e) A [subcontractor] may recover the amount of the person's claim if, after the amounts of other claims that have priority are subtracted from the amount due from the property owner to the employer or lessee, the remainder of the amount due from the property owner to the employer or lessee is sufficient to pay the amount of the person's claim.

Ind. Code § 32-28-3-9. The purpose of the mechanic's lien statute is to make a property owner an involuntary guarantor of payments for the reasonable value of improvements made to real estate by the physical labor or materials furnished by laborers or materialmen. *Premier Invst. v. Suites of America*, 644 N.E.2d 124, 130 (Ind. 1994), *reh'g denied*; *Ford v. Culp Custom Homes, Inc.*, 731 N.E.2d 468, 472 (Ind. Ct. App. 2000), *trans. denied*. Thus,

the core function of the mechanic's lien laws are to prevent the inequity of a property owner enjoying the benefits of the labor and materials furnished by others without recompense. *Id*.

We have previously held that a property owner has a lien defense when he has already paid contractor in full. *Indianapolis Power & Light Co. v. Todd*, 485 N.E.2d 632 (Ind. Ct. App. 1985). In that case, Indianapolis Power and Light Co. (IPALCO) contracted with R.M. Industrial Products Co. (R.M.) to do work on a generator station. *Id*. at 633. R.M. subcontracted with Yocum Corporation (Yocum) to complete a portion of the work. *Id*. Yocum hired Todd and Sandlin (T.S.) to assist them on the project. *Id*. At the conclusion of the project, IPALCO paid R.M. the full balance due for their services, and R.M. subsequently paid Yocum in full. *Id*. However, Yocum failed to pay T.S. for their labor and services, and T.S. took out a mechanic's lien against IPALCO's generator station. *Id*.

At the time, Indiana mechanic lien statute's provided in pertinent part that, "the owner shall be liable for such claim, *but not to exceed the amount which may be due, and may thereafter become due from him to the employer . . . .*" *Id*. at 635 (quoting I.C. § 32-8-3-9) (added emphasis). IPALCO argued that this language had the effect of delegating employees of a paid subcontractor to a class not protected by the statute. IPALCO essentially made a privity argument, asserting that since no contractual relationship existed between IPALCO as "owner" and Yocum as "subcontractor," R.M. as "contractor" alone was bound to pay Yocum. *Id*. We disagreed with IPALCO, finding that the language of the statute pertains to the *amount* the claimant can recover, *not whether* the claimant is a member of the protected class. *Id*. Furthermore, we held that, "recovery can be had only from funds owed by the owner to the contractor for work done on his property and *if he has already paid all of the*

money due to the general contractor, he cannot be forced to pay a second time." *Id*. (emphasis added).

Our current mechanic's lien statute provides similar limiting language also used in *Todd*, specifically: "The property owner is liable to a [subcontractor] for not more than the amount that is due and may later become due from the owner to the employer or lessee." I.C. § 32-28-3-9(d).

In this case, Contractor left an outstanding balance to Subcontractor for the work on the roads and curbs. Subcontractor instituted a mechanic's lien against Developer seeking to foreclose against its 26 unimproved lots. In support of Developer's Motion for Partial Summary Judgment, Ben Houser, President and sole shareholder of Signature Properties, testified by affidavit that "[Developer] has paid [Contractor] the full contract price for excavation and earth moving in the Subdivision, and for paving of the dedicated public roads in the Subdivision." (Appellant's App. p. 63). The evidence that Developer has paid the full price for the road and curb work provided by Subcontractor is uncontroverted. We find no reasons today to extend our construction of the mechanic's lien statute beyond the limits we

set in *Todd*. Therefore, we conclude that the trial court did not err when granting Partial Summary Judgment to Developer.

CONCLUSION

We conclude that the trial court did not err in granting Partial Summary Judgment to Developer because the mechanic's lien is invalid and unenforceable.

Affirmed.

BAKER, C.J., and ROBB, J., concur.